

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7625 OF 2005

M/s Worldwide Cargo Movers .. Petitioner

V/s

Union of India & Anr. .. Respondents

Mr.S.N. Kantawalla with Ms. Rachana Kantawalla and
Mr.Yogesh Rohira for the Petitioner.

Mr.Y.S. Bhate for the Respondents.

CORAM : H.L. GOKHALE &
J.P. DEVADHAR, JJ.

DATE : 17TH NOVEMBER 2005

P.C. :

1. Heard Mr.Kantawalla for the Petitioner and
Mr.Bhate for the Respondents.

2. The petition seeks to challenge the order dated
2nd November 2005 suspending the Custom House Agent
Licence of the Petitioner under Regulation 20
Sub-regulation (2) of the Custom House Agent Licensing
Regulations, 2004 (for short "the Regulations").

3. The short facts leading to the petition are
thiswise.

. Some eight Mercedes cars were found to have been

smuggled into Jawaharlal Nehru Port. One Rehman Shaikh, an employee of the Petitioner, who was having a necessary licence under Regulation 8 of the Regulations, was said to have been involved in that incident. He was arrested. Subsequently this order has been passed now suspending the licence. The second paragraph of the impugned order records that an enquiry is contemplated under Regulation 22 and an immediate action is warranted and therefore this order is passed.

4. Mr.Kantawalla, learned counsel for the Petitioner, submits that the incident took place in May 2005. The employee concerned moved for bail and that order has been passed by a Single Judge of this Court on 19th May 2005. Mr.Kantawalla submits that the Petitioner should not be made to suffer on account of actions of an employee. Apart from that, his contention is that this order cannot be said to be an order justified on the ground of immediate action. In his submission, no proper reasons are given in that order. He also submits that under Regulation 22, a notice and hearing is contemplated which has not been followed.

5. Mr.Bhate, learned counsel for the Respondents, on the other hand, points out that a person having licence under Regulation 8 has to be employed by such

Custom House Agent and he represents the Custom House Agent before all the authorities concerned, and when such a person is involved, the vicarious liability cannot be denied. That apart, he draws our attention to Regulation 20 Sub-regulation (2) of the Regulations which provides that notwithstanding anything contained in sub-regulation (1), where an immediate action is necessary, the Commissioner of Customs may suspend the licence of a Custom House Agent where an enquiry against him is contemplated. The procedure for that enquiry has been laid down in Regulation 22. Inasmuch as there is a reference to this enquiry in the second part, we asked Mr.Bhate as to when this enquiry will be initiated. One Mr.B.C. Patel, Assistant Commissioner of Customs, has filed an affidavit in reply. On instructions from Mr.Patel, who is present in Court, Mr.Bhate states that a notice for enquiry will be issued within one week from today and the enquiry will be completed and appropriate order will be passed within 8 weeks thereafter. Needless to state that the Petitioner will cooperate in this enquiry.

6. Mr.Kantawalla has drawn our attention to two decisions of the Calcutta High Court; one in the case of **N.C. Singha & Sons v. Union of India - 1998 (104) E.L.T. 11 (Cal.)** and another of a Single Judge of that

Court in the case of **Kamal Kumar Agarwal v. Union of India - 2004 (171) E.L.T. 301 (Cal.)**. Mr.Kantawalla has pointed out that both these judgments emphasised a hearing and following the necessary procedure, and an opportunity being given. We quite see the force in his submission, but at the same time we cannot ignore that there is a power in the authority concerned under Regulation 20(2) of the Regulations. A post decisional hearing can also be resorted to in appropriate cases and that is how Regulation 20(2) will have to be read when read along with Regulation 22. Otherwise if a hearing was contemplated under Regulation 20(2), it would run counter to an immediate action. That hearing is otherwise provided under Regulation 22 itself. It is only to deal with appropriate cases when an immediate action is required that the authority is given this power. Mr.Kantawalla undoubtedly submits that good time has gone since the vehicles were found to have been smuggled as alleged. Even so, inasmuch as we are providing for an immediate hearing, we do not think that we should interfere into the impugned decision. Mr.Kantawalla has also referred to an Apex Court judgment reported in the case of **Harbanslal Sahnia v. Indian Oil Corporation Ltd. - (2003) 2 SCC 107**. The court has held that where somebody's bread and butter is affected for an irrelevant and non-existent cause, the

party can approach the High Court instead of an alternate remedy. In the present case, we do not think that there are any irrelevant or non-existent causes prima facie.

7. For the reasons stated above, the petition stands dismissed.

(H.L. GOKHALE, J.)

(J.P. DEVADHAR, J.)